No. 80-169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED PARCEL SERVICE, INC.,
Petitioner,

v.

WILLIAM MITCHELL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AS AMICUS CURIAE

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MOTION BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The International Brotherhood of Teamsters (IBT) hereby moves for leave to file a brief as *amicus curiae* arguing that the decision of the United States Court of Appeals for the Second Circuit which this Court has agreed to review (49 U.S.L.W. 3264), was wrongly decided. William Mitchell, the Respondent, has denied his consent to the filing of said brief.

INTEREST OF THE IBT AND ISSUE TO BE COVERED IN ITS BRIEF AMICUS CURIAE

The IBT is an international union comprised of 752 affiliated local unions, including Teamsters Local 177, a defendant below and a respondent before this Court. The collective membership of the IBT's affiliates totals approximately 1.9 million working men and women. Some 80,000 to 100,000 different collective bargaining agreements cover Teamster-represented employees in this country. Consistent with recent trends in collective bargaining,[1] most of these agreements contain procedures for grievance resolution, including the arbitration of disputes over the meaning and application of agreements dealing with wages, hours and terms or conditions of employment.

As a spokesman for a large segment of organized labor, the IBT has a continuing interest in the development of a principled body of law regarding the arbitral enforcement of collective agreements and the obligation of representatives in regard thereto. In our view, the lower court's decision in this case contravenes federal policy favoring final and binding arbitration as a means of labor dispute resolution. It also conflicts with federal policy preferring a speedy resolution of labor disputes. We believe that it will aid the Court in its deliberation to have a succinct statement of why that is so. The function of the accompanying brief *amicus curiae* is to provide such a statement.

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[1] See, e.g., *Characteristics of Major Collective Bargaining Agreements, July 1, 1975*, BLS Bull. 1957, at 94 (1977) (less than 4% of 1,514 major agreements surveyed do not contain arbitration provisions).

CONCLUSION

For the above stated reasons, this motion for leave to file a brief of *amicus curiae* should be granted.

Respectfully submitted,

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BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

This brief *amicus curiae* is filed by the International Brotherhood of Teamsters (IBT) contingent on the granting of the foregoing motion for leave to file a brief as *amicus curiae.*

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STATEMENT OF THE CASE

This employee action, brought against an employer and a union, seeks to relitigate a claim of wrongful discharge previously decided adversely to the employee by an arbitral panel convened pursuant to the collective bargaining agreement's grievance arbitration procedures.[1] Under that agreement, the arbitral decision was final and binding. But the suit alleges that, contrary to the arbitration decision, the discharge complained against was in violation of the contract, and that the union's failure to represent the employee fairly at the arbitration hearing contributed to the erroneous outcome. This action, filed under § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, is one envisioned by *Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976).

The sole issue presented here relates to the appropriate statute of limitations to be applied to a § 301 action alleging unfair representation which is filed after an arbitration decision has been rendered.

Characterizing this action as one to vacate an arbitral award, the district court applied New York's 90-day limitation on such suits (N.Y. CIV. PRAC. § 7511 (McKinney, 1963))[2] and dismissed the complaint filed more than 17 months after the arbitral decision had issued. Justifying its holding, the court noted that "[t]he policy favoring 'relatively rapid disposition of labor disputes' . . . combines in this case with the policy favoring arbitration as a means of securing a quick and final resolution of disputes in general." (Pet., at 3a)

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[1] The Employer is United Parcel Service, and the Union is Department Store and Wholesale Drivers, Warehousemen and Helpers, Local Union No. 177.

[2] Section 7511 provides: "An application to vacate or modify an award may be made by a party within 90 days after its delivery to him."

The United States Court of Appeals for the Second Circuit disagreed with the district court's characterization, although it acknowledged that the "'effect of a judgment for [the discharged employee] would be to nullify the arbitral decision'. . ." (Pet., at 12a). In reversing, it held that New York's six-year limitation on breach of contract actions (N.Y. CIV. PRAC. § 213(2) (McKinney, 1972)) was applicable. The court of appeals perceived no difference for statute of limitations purposes between § 301 actions where the grievance has not been taken to arbitration and those where an arbitration decision has been issued. In its view, "such a fractionalized approach to § 301 wrongful discharge actions" is not warranted.[3]

Accordingly, the court of appeals rejected the district court's reasoning that the federal policy favoring finality of arbitration awards dictated the application of a shorter limitation period in this type of § 301 action. Rather it believed that employees' rights *vis-a-vis* their employers and unions prevailed in this instance over the federal policy favoring arbitration, reasoning that a 90-day limitation would severely restrict those rights and unnecessarily add to the already stiff burden a plaintiff faces. Further, it held that a six-year period adequately furthers the federal goal of relatively rapid disposition of labor disputes, relying on *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696, 707 (1977).

We submit that the holding of the court of appeals misconstrues the decisions of this Court in *Hines* and *Hoosier Cardinal*, and contravenes established federal policy favoring final and binding arbitration and the speedy resolution of labor disputes. Moreover, it ignores the basic nature of this lawsuit.

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[3] The court relied on its previous decision in *Abrams* v. *Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009 (1971), wherein it held the six-year limitation applicable to § 301 breach of contract and unfair representation claims in a case where the union had not taken the grievance to arbitration.

SUMMARY OF ARGUMENT

Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, contemplates suits by employees, as well as suits by and against employers and labor organizations. *Smith* v. *Evening News Ass'n*, 371 U.S. 195 (1962). An employee can maintain suit against his union for breach of the duty of fair representation, and against his employer for breach of contract, in one action. *Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976); *Vaca* v. *Sipes*, 386 U.S. 171 (1967). Because there is no federal statute of limitations governing § 301 actions, the timeliness of such suits is controlled, as a matter of federal law, by the most appropriate state statute of limitations. *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696 (1977).

In selecting the most appropriate state statute of limitations, a federal court must characterize the action, taking into account the elements of a *Hines* § 301 suit and applicable federal policies. State characterization principles, to the extent they conflict with important federal policies, must be disregarded. *UAW* v. *Hoosier Cardinal Corp.*, *supra*, 383 U.S. at 706. *See also*, *Johnson* v. *Railway Express Agency*, 421 U.S. 454, 465 (1975). Congress has declared as a paramount federal policy the promotion of industrial peace through the *quick* and *final* adjustment of labor disputes by arbitration. 29 U.S.C. § 173(d); *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960). Suits complaining of unfair representation in the arbitration process serve to safeguard individual interests. Yet, by lifting the bar of the collective bargaining agreement's finality provision, and by postponing the resolution of labor disputes, their maintenance is at odds with important federal policies favoring speedy and final arbitral resolutions. These competing interests must be accommodated by adoption of a cohesive limitations policy.

A fair representation action following an arbitral award is most closely analogous to an action to vacate the award. On this basis, New York's 90-day limitation is applicable to the instant action. N.Y. CIV. PRAC. § 7511. This result is supported, first, by a realistic appraisal of the object of the plaintiff's suit, and second, by a balancing of the relevant collective and individual interests involved here. Obviously, the plaintiff seeks to relitigate before the district court the same claim he lost in arbitration, namely the challenge to his discharge, and a judgment in his favor would be tantamount to vacating the arbitrator's decision. *Liotta* v. *National Forge Co.*, 105 L.R.R.M. 2636 (3d Cir. 1980). Furthermore, the central issue in this case is not the employer's alleged breach of contract, but whether the "final and binding" provision of the labor agreement's arbitration article is to be given conclusive effect. *Hines* v. *Anchor Motor Freight, supra*, 424 U.S. at 567, 569. This is but another way of asking whether the award should be vacated.

Borrowing New York's 90-day limitation applicable to suits to vacate arbitral awards for purposes of *Hines* § 301 fair representation cases better accommodates competing collective and individual interests than the State's extended six-year limitation for breach of contract actions. The former limitation promotes the use of arbitration by foreclosing seriously delayed challenges to arbitration awards. This is the purpose of N.Y. CIV. PRAC. § 7511, which is consistent with federal labor policy, and there is no apparent unfairness in limiting fair representation suits to the same 90-day period within which employers and unions are obligated to secure review or enforcement of arbitral awards.

On the other hand, the six-year limitation all but ignores Congress' preference for the speedy and final resolution of labor disputes. In this regard, the six-

year limitations period leaves questions of contract interpretation and administration uncertain for an unreasonable duration, thus tending to frustrate the smooth functioning of the collective bargaining system. An extended limitations period may also prejudice employee contractual rights, either by delaying the general application of arbitral interpretations until the limitations period has run, or by disrupting employee expectations that have long been settled through arbitration.

No manifest injustice results to employee rights from the choice of the 90-day limitations period prescribed by New York law. In both the National Labor Relations Act, 29 U.S.C. § 160(b), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e), (f)(1), Congress opted for short limitations periods to encourage the prompt processing of unfair labor practice and employment discrimination charges. Measured against these analogous standards, it is apparent that *Hines* § 301 rights are not compromised by the characterization of this action as one to vacate an arbitral award. Ninety days from delivery of the arbitral award is an adequate time in which to file a § 301 suit, thus preserving *Hines* rights, but is not so unduly long as to jeopardize the stability of the collective bargaining process.

ARGUMENT

I. THE CHOICE OF THE MOST APPROPRIATE STATE STATUTE OF LIMITATIONS TO BE BORROWED FOR A § 301 FAIR REPRESENTATION ACTION IS A MATTER OF FEDERAL LAW.

A. "Characterization" Of The Action Is A Federal Law Question.

Because there is no federal statute of limitations governing § 301 breach of contract or fair representation actions, the timeliness of such suits is controlled, as a matter of federal law, by the most appropriate state statute of limitations. *UAW* v. *Hoosier Cardinal Corp., supra,* 383 U.S. at 704-05.[4] A federal court's first task in selecting the appropriate state limitations period is to characterize the lawsuit. "The characterization of this action . . . is ultimately a question of federal law." *UAW* v. *Hoosier Cardinal Corp., supra,* 383 U.S. at 706.[5] While the courts may in the first instance look to the state law characterization, that characterization should be rejected if it is "unreasonable or otherwise inconsistent with national labor policy." *UAW* v. *Hoosier Cardinal Corp., supra,* 383 U.S. at 706.

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[4] State statutes have frequently been held applicable to other federal causes of action where no limitations provision is stated in the federal act. See cases cited in *Johnson* v. *Railway Express Agency,* 421 U.S. 454, 462 (1975). *But see, Occidental Life Insurance Co.* v. *EEOC,* 432 U.S. 355 366-372 (1977).

[5] In *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448 (1957), the Supreme Court held that in § 301 suits courts must apply federal substantive law which should be fashioned by the courts in accordance with national labor policy. Although state law consistent with the purpose of § 301 may be used in formulating rules to be applied, the source of private rights is solely federal. 353 U.S. at 457. Also, incompatible doctrines of local law must give way to principles of federal labor law. *Tteamsters Local 174* v. *Lucas Flour Co.,* 369 U.S. 95 (1962).

More recently, this Court stated in *Johnson* v. *Railway Express Agency, supra*, 421 U.S. at 465:

> "Although state law is our primary guide in this area, it is not, to be sure, our exclusive guide. As the Court noted in *Auto Workers* v. *Hoosier Corp.* . . . considerations of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration." [6]

Then, in *Occidental Life Ins. Co.* v. *EEOC, supra*, 432 U.S. at 367, this Court held:

> "But the Court has not mechanically applied a state statute of limitations simply because a limitations period is absent from the federal statute. State legislatures do not devise their limitation periods with national interests in mind, and it is the duty of the federal court to assure that the importation of state law will not frustrate or interfere with the implementation of national policies. . . . State limitations periods will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute." [7]

While the *Hoosier* Court did rely on state limitations provisions, rather than adopting a uniform § 301 limitations period, it further contemplated the application of federal law to subsidiary issues which arise in determining appropriate limitations periods.[8] As the Fifth

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[6] *See*, Note, *Filing of an Employment Discrimination Charge Under Title VII As Tolling the Statute of Limitations Applicable to a 1981 Action: The Unanswered Questions of Johnson* v. *REA*, 26 Case W. L. Rev. 889, 903-904 n.77 (1976).

[7] *See also*, Mishkin, *The Variousness of "Federal Law": Competence and Discretion in the Choice of National and State Rules for Decisions*, 105 U. of Pa. L. Rev. 797, 805 (1957).

[8] One commentator has stated that federal courts are "well situated to write federal law" on such subsidiary issues. 53 Colum. L. Rev. 68, 72 (1953).

Circuit has held: "federal courts borrow only the chronometric aspects and not the procedural or substantive nuances of the law of the forum." *Wolf* v. *Frank*, 477 F.2d 467, 475 (5th Cir.), *cert. denied*, 414 U.S. 975 (1973). Manifestly, in characterizing the action for purposes of borrowing the most appropriate state statute of limitations, federal common law is controlling. State characterization principles may be applied only to the extent they are consistent with national labor policy.

B. Nature Of A § 301 Fair Representation Act And The Applicable Federal Policies.

The "characterization" process necessarily requires recognition of the elements of a fair representation action, in the context of each case's particular factual circumstances, and an understanding of the federal labor policies which inform the choice of a state limitations period. In *Hines* v. *Anchor Motor Freight*, *supra*, 424 U.S. 554, this Court viewed the case as one in which the bar of the collective bargaining agreement's provision for "final and binding" arbitration would be removed, if the integrity of the arbitral process had been seriously undermined by the union's breach of its fair representation duty. *Id.* at 567.

> "To prevail against either the company or the Union, petitioners must show not only that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union. . . ." [*Id.* at 570.]

In so holding, the Court made clear that the bar of the finality provision is not to be lightly removed, since it "has sufficient force to surmount occasional instances of mistake." *Id.* at 571. Nor can the plaintiff in a *Hines* case prevail by simply "demonstrating mere errors in judgment"; dishonest, bad faith or discriminatory union conduct must be shown. Otherwise, even if

the arbitrator has erred, the contract's finality provision is to be enforced. It is apparent, therefore, that a fair representation action is in the nature of an exception to the ordinary rule mandating the speedy and final disposition of labor disputes through arbitration. Ultimately, it serves as a safeguard for individual, as opposed to collective, interests should operation of the contractual machinery fall below a minimum level of integrity.

Thus perceived, the fair representation action is within the framework of the national labor policy, and it must be harmonized with other, equally important labor objectives. Of these competing policies, none is more important than the congressionally declared policy of promoting industrial peace through the quick and final adjustment of labor disputes by a method agreed upon by the parties.[9] As repeatedly recognized by this Court,[10] grievance arbitration is the key to realization of that policy. Arbitral interpretations of the collective bargaining agreement furnish a body of private law—"the law of the shop"—which guides the parties in their continuing relationships. In this sense, then, arbitration lies at the heart of the system of industrial self-government created by collective bargaining. But the goal of peaceful dispute settlement will be actualized only if all those concerned—employer, union, and employee—are assured

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[9] Labor-Management Relations Act of 1947, 29 U.S.C. § 173(d) provides: "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

[10] *See, United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *Humphrey* v. *Moore*, 375 U.S. 335 (1964); *Hines* v. *Anchor Motor Freight, supra*, 424 U.S. at 562-63.

that arbitrators' rulings once rendered are truly final and binding.[11]

A further goal of national labor policy, as this Court has announced, is the "relatively rapid disposition of labor disputes." *UAW* v. *Hoosier Cardinal Corp., supra,* 383 U.S. at 707. Speed, like finality, is among the important federal interests advanced by private dispute settlement mechanisms. Both of these interests advance the collective objectives of all bargaining unit employees. Yet, they are necessarily at odds with the right of an individual employee to secure a judicial redetermination of his or her "shop" rights in those exceptional situations where arbitration proceedings are tainted by breach of the duty of fair representation. To state that important collective interests collide with individual interests at this juncture, however, is simply to recognize the problem. The critical question is how these competing interests are to be accommodated. We submit that accommodation can best be achieved in *Hines* § 301 cases by adoption of state limitations periods applicable to actions to vacate arbitral awards.

II. A FAIR REPRESENTATION ACTION FOLLOWING AN ARBITRAL AWARD IS MOST CLOSELY ANALOGOUS TO AN ACTION TO VACATE THE AWARD.

The court below erroneously held that categorizing this action as one to vacate an arbitral award was precluded by New York state law under which an employee has no standing to file such a lawsuit. This conclusion improperly incorporates state standing principles into a

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[11] In accordance with the preference for arbitration, this Court has established a policy of judicial deference to arbitrator's awards, viewing the arbitrator as better equipped than a judge to adjust labor management difficulties. *United Steelworkers* v. *Warrior & Gulf Navigation Co., supra,* 363 U.S. at 582. Thus, judicial review of arbitral decisions is quite limited

§ 301 action. Clearly § 301, as interpreted by this Court, furnishes the requisite standing for an employee to sue.[12] The only gap in § 301 is the omission of a time limit for the filing of suit. Accordingly, as noted above, all that need be borrowed from New York law is the "chronometric aspect" of the state statute of limitations and not all of the subsidiary nuances of that law.

The characterization of fair representation actions where there has been no arbitration has divided the Circuits. Some courts have identified them as breach of contract actions, while others have viewed them as tort actions. *See, e.g., Butler* v. *Local 823, IBT*, 514 F.2d 442, 447 (8th Cir.), *cert. denied*, 423 U.S. 924 (1975); 44 Geo. Wash. L. Rev. 418 (1976). Those courts which have adopted the breach of contract label have often done so because of the close relationship between the breach of contract claim against the employer and the unfair representation claim against the union, together with the convincing need for parallel limitations. That is the approach of the Second Circuit Court of Appeals. *See, Abrams* v. *Carrier Corp., supra*, 434 F.2d at 1251-53. However cases where there has been no arbitration have been characterized, we submit that a different rule is warranted where a "final and binding" arbitration award has been rendered.

The § 301 suit in *Hoosier Cardinal*, which did not involve an arbitration or a fair representation claim, was categorized by the Court, in conformity with state law, as one for breach of an oral contract. Nonetheless, the Court acknowledged the existence of a variety of § 301 actions:

> "Whether other § 301 suits different from the present one might call for the application of other rules

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[12] *Hines* v. *Anchor Motor Freight, supra*, 424 U.S. 554; *Vaca* v. *Sipes*, 386 U.S. 171 (1967); *Smith* v. *Evening News Ass'n*, 371 U.S. 195 (1962); *Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953).

> on timeliness we are not required to decide and we indicate no view whatsoever on that question." [*Id.* at 704 n.7.]

Thus, contrary to the court below, the Supreme Court clearly envisioned a "fractionalized approach" to determine timeliness in § 301 actions, dependent on the precise character of the particular action. Accordingly, application of different statutes of limitations in unfair representation actions, depending on whether there has been an arbitration award, is reasonable.[13]

In our view, this action is most appropriately characterized under federal law as one to vacate an arbitral award; N.Y. CIV PRAC. § 7511's 90-day limitation should thus apply. This result seems obvious. *Liotta* v. *National Forge Co.*, 105 L.R.R.M. 2636 (3d Cir. 1980).[14] The plaintiff is seeking to relitigate before the district court the same claim he lost before the arbitral panel, namely the challenge to his discharge. Dissatisfied with the result of the arbitration, he seeks to upset the arbitrator's decision. Indeed, the Court below conceded that a judgment in the plaintiff's favor would be tantamount to vacating the arbitration decision. Moreover, this characterization is conceptually sound. For were not this action viewed as one to vacate the award, plaintiff's success before the district court on his discharge claim

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[13] The courts have employed a "fractionalized approach" in other federal causes of action which rely on state limitations provisions, dependent on the nature of the relief sought. *See, e.g.*, "State Statutes of Limitations As Affecting Federal Civil Rights Actions Under 42 U.S.C. § 1981," 29 ALR Fed. 710 (1976).

[14] A significant number of district courts have adopted this characterization, including the district court in this case and in *Flowers* v. *Local 2602, United Steelworkers*, 105 L.R.R.M. 2299 (W.D.N.Y. 1979), *rev'd*, 105 L.R.R.M. 2304 (2d Cir. 1980), *petition for certiorari filed*, No. 80-26 (July 7, 1980). *See*, cases cited in Petition at 13 nn.8 and 9. *Contra, Smart* v. *Ellis Trucking Co.*, 580 F.2d 215 (6th Cir. 1978), *cert. denied*, 440 U.S. 958 (1979).

would subject the employer to two conflicting decisions: the award of the arbitrator upholding the discharge and the judgment of the district court invalidating the discharge.

Further, it is clear that under *Hines*, contrary to the court of appeals' conclusion, the gravamen of this § 301 action—indeed, its threshold issue—is whether an otherwise "final and binding" arbitral decision may be attacked because of the union's failure to represent the plaintiff fairly at the arbitration proceeding. Evidence sufficient to prove the union's breach of its duty must be submitted before the breach of contract claim against the employer may be entertained. Thus, the conclusion of the court of appeals that *Hines* requires that this suit be characterized as one for breach of contract is erroneous. For the central issue in this case, as framed by *Hines*, is not the employer's alleged breach of contract, but whether the "final and binding" provision of the collective bargaining agreement's arbitration article is to be given conclusive effect.[15] In other words, may the award be vacated?[16]

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[15] Similarly inaccurate is the conclusion of the lower court that this § 301 suit is procedurally distinct from an action to vacate an arbitral award since § 301 is independent of the grievance process. A *Hines* action is clearly not independent of the grievance process as it may be brought only if adequate grounds are proven for lifting the finality provisions of the contract. *See, e.g., Hines* v. *Anchor Motor Freight, Inc., supra*, 424 U.S. at 566; *Vaca* v. *Sipes, supra*, 386 U.S. at 186.

[16] In his dissent in *Hines, supra*, 424 U.S. at 576, Justice Rehnquist expressed the view that under the Uniform Arbitration Act, in use in many states, unfair representation was not one of the permissible grounds for vacating an arbitration award. The majority opinion, while obviously disagreeing with his belief that unfair representation was not a proper basis for vacating an award, nonetheless did not dispute his characterization of the lawsuit.

III. THE CHARACTERIZATION OF A FAIR REPRESENTATION SUIT IN DEROGATION OF A FINAL AND BINDING AWARD AS AN ACTION TO VACATE THE ARBITRATION AWARD COMPORTS WITH FEDERAL LABOR POLICY.

Borrowing New York's 90-day limitation applicable to suits to vacate arbitral awards for purposes of *Hines* § 301 fair representation cases better accommodates competing collective and individual interests than the State's extended six-year limitation for breach of contract actions. The former limitation promotes the use of arbitration by foreclosing seriously delayed challenges to arbitration awards. This is the purpose of N.Y. CIV. PRAC. § 7511, which is consistent with federal labor policy, and there is no apparent unfairness in limiting fair representation suits to the same 90-day period within which employers and unions are obligated to secure review or enforcement of arbitral awards. On the other hand, the six-year limitation all but ignores Congress' preference for the speedy and final resolution of labor disputes. Consequently, it detracts from the attractiveness, convenience and economy of arbitration as the preferred means of settling labor disputes.

The six-year limitations period leaves questions of contract interpretation and administration uncertain for an unreasonable duration. Arbitration decisions provide guidance as to the meaning of contract terms and aid the parties to the agreement in carrying out their contractual rights and duties. If the validity of those decisions is vulnerable to attack for six years, the parties may be hesitant to make broad changes in their operations or conduct to conform with the decision, for they cannot be sure that the award will survive as the "law of the shop." Moreover, since six years outlasts the duration of any collective bargaining agreement, negotiations for new agreements may be confused by doubt as

to the meaning of the old. In sum, characterization of this lawsuit as one for breach of contract would necessarily frustrate Congress' effort to promote the smooth functioning of the collective bargaining system.

Additionally, such a characterization would prejudice employees whose rights the arbitral awards concern. Grievances often affect not simply one employee, as in this case, but a large group. Decisions regarding, for example, seniority rights have potentially far-reaching consequences for a bargaining unit. The union and employer may decline to implement such decisions fully for fear that an unsatisfied employee will sometime in the future challenge the results. In consequence, some employees may suffer loss of benefits. Or if the decision is implemented, and then later held invalid, employee expectations will be significantly disrupted. Surely, the interests of all concerned are furthered by a quick arbitral resolution and the finality of arbitral awards. The complications which will arise in matters of contract interpretation, administration, and negotiations if a six-year limitation period is adopted serve to highlight the distinction between this case and one in which there has been no arbitral award. For these particular difficulties arise only when an award has been rendered.

Thus, while this Court in *Hoosier Cardinal*, *supra*, 383 U.S. at 707, approved the borrowing of a six-year statute of limitations as adequately furthering the goal of "relatively rapid disposition of labor disputes," that case was quite different from this one. There the Court was faced with a choice between a six-year and 20-year limitation. More importantly, the case was strictly one for breach of contract and involved no attempt to vacate an arbitral award. This distinction is crucial given federal policy favoring final and binding arbitral awards. Moreover, *Hoosier Cardinal* still reflects a "distinct preference for the shorter statute of limitations where the

question of characterization is a close one and no manifest injustice results from such a choice." [17]

No manifest injustice results to employees' rights from the choice of the 90-day period herein. Under the National Labor Relations Act, 29 U.S.C. § 160(b), the time limit for the filing of unfair labor practice charges is six months. Particularly since an alleged breach of the union's duty of fair representation may also be cognizable as an unfair labor practice,[18] the 90-day period cannot be viewed as unusually short.[19] Also, under Title VII of the Civil Rights Act of 1964, as amended in 1972, an employee must file unfair employment practice charges with the EEOC within 180 days of the discrimination complained against, or within 240 days of the discriminatory event if the charge is to be deferred to a state fair employment practice agency. After receipt of a right-to-sue letter from EEOC, the employee must file suit in district court within 90 days. 42 U.S.C. § 2000e-5(c), (e) and (f)(1). These time limits are strictly enforced. *IUE v. Robbins & Myers, Inc.*, 429 U.S. 229 (1976); *Mohasco* v. *Silver*, 65 L.Ed.2d 532 (1980).

As this Court noted in *Mohasco, supra*, 65 L.Ed.2d at 543, 548 (footnotes omitted):

> "time limitations are inevitably arbitrary to some extent; and the limitations at issue here are not so short that a plaintiff's remedy is effectively denied for all practical purposes without an opportunity for a hearing.
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[17] *See, e.g., De Arroyo* v. *Sindicato Trabajadores Packinghouse*, 425 F.2d 281, 287 (1st Cir.), *cert. denied*, 400 U.S. 877 (1970).

[18] *See, e.g., Vaca* v. *Sipes, supra*, 386 U.S. 171; *Miranda Fuel Co.*, 140 N.L.R.B. 181, *enf. denied*, 326 F.2d 172 (2d Cir. 1963); *Local 12, United Rubber Workers*, 150 N.L.R.B. 312, *enf'd.*, 368 F.2d 12 (5th Cir. 1966).

[19] Cf. *Falsetti* v. *UMW*, 355 F.2d 658, 662 (3d Cir. 1966).

> By choosing what are obviously short deadlines, Congress clearly intended to encourage the prompt processing of all charges of employment discrimination. . . ."

Certainly the public policy favoring equal employment opportunity is as fundamental as that favoring fair representation. If an employee has only 90 days after receipt of a right-to-sue letter to obtain counsel and file suit, then fairness requires no more in the instant case.

Hines rights are not compromised by the characterization of this § 301 action as one to vacate an arbitral award. That characterization best effectuates and balances the conflicting policy interests at stake. Ninety days from delivery of the arbitral award[20] is an adequate time in which to file a § 301 suit, thus preserving *Hines* rights, but is not so unduly long as to jeopardize the stability of the collective bargaining process. The arguable burden of prompt filing, which the 90-day limitation imposes, is consistent with the unique nature of fair representation actions. This Court did not intend to establish an alternate judicial forum for the enforcement of collective bargaining agreements in declaring an employee's right to seek redress from a union's unfair representation at an arbitration hearing. Instead, the cause of action was reserved for exceptional situations, and legitimate individual interests will not be harmed by requiring that it be asserted promptly.

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[20] Forty-two states have enacted special statutes of limitations governing actions to vacate arbitration awards. In 28 of these states, the prescribed time limit is 90 days.

Contrary to the statement of the Court below (Pet., 11a), the 90 days run from delivery of the award, not from the date of the employee's discharge.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals for the Second Circuit should be reversed and the case remanded for entry of an order affirming the district court's grant of summary judgment dismissing the complaint as barred by the 90-day limitations period on actions seeking to vacate arbitral awards.

Respectfully submitted,

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